

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between ESMERALDA GALAN and JOSE ORTIZ, individually and as parents and successors in interest to their deceased minor son, MATEO ORTIZ, (collectively referred to hereinafter as the "Plaintiffs"), and the CITY OF SAN JOSE (hereinafter, the "City"), collectively referred to herein as the "Parties."

WHEREAS, the Plaintiffs along with their surviving minor son, Estevan Ortiz, and on behalf of decedent, Mateo Ortiz, (collectively, the "Claimants") submitted a Claim Against the City of San Jose on or about July 20, 2010; the Claim was rejected by the City and notice of that rejection was mailed to the Claimants' legal counsel on or about November 10, 2010; and Plaintiffs thereafter filed an action against the City and others, on or about April 19, 2011, in the Superior Court, County of Santa Clara, case number 1-11-CV-199150, entitled "*Esmeralda Galan, et al. v. City of San Jose, et al.*" (hereinafter, the "Action"); and,

WHEREAS, the City has denied any and all liability for the damages claimed in the Action; and,

WHEREAS, the Parties, in recognition of the risks and costs of litigation, now undertake to settle this Action in its entirety, and the Plaintiffs now undertake to release and extinguish on a final basis any and all claims against the City and the additional individuals and entities described in Paragraph 1, below, arising out of, or in any way connected with, the accident which is the subject of the Action, that occurred on or January 22, 2010, in San Jose, California, as more fully described in the Complaint filed in this Action (the "Incident"); and,

WHEREAS, the Plaintiffs desire to dismiss the Action with prejudice;

NOW THEREFORE, the Parties agree as follows:

1. For and in consideration of the sum of three hundred and twenty-five thousand dollars (\$325,000.00), Plaintiffs, on behalf of themselves, as well as their past and present assigns, heirs, executors, and administrators, hereby release and forever discharge the City and all other past and present City employees, partners, agents, predecessors, successors, consultants, attorneys, and assigns, all of whom expressly deny any liability, from any and all claims, demands, damages, actions, or suits, known and unknown, relating to, arising out of, or in any way connected with the Incident. A draft in the amount of three hundred and twenty-five thousand dollars (\$325,000.00) shall be made payable to "Jose Ortiz, Esmeralda Galan and their attorney, William R. Seligmann," and delivered to Plaintiffs' legal counsel within a reasonable time after (1) execution of this Settlement Agreement on behalf of the City, and (2) the City's receipt of written confirmation that the claim asserted by Kaiser Healthcare North has been satisfied. In consideration of that payment, Plaintiffs shall dismiss the Action with prejudice, immediately after the court enters its order regarding cross-defendant Rolando Galan's motion for a "good faith" settlement determination or sixty days after this Settlement Agreement is executed on behalf of the City, whichever occurs last. Once the dismissal is entered by the court, the City will provide the Plaintiffs with the letter described in Section 8(b) of the Stipulation For Settlement attached hereto as Exhibit A, and made a part hereof.

2. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement and to effectuate the dismissal with prejudice of the Action.

3. Section 1542 of the Civil Code of the State of California provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

The Plaintiffs represent that Civil Code Section 1542 has been read and reviewed and understood, and that they hereby waive any and all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or in any way connected to the Incident based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

4. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims relating to, arising out of, or in any way connected with the Incident. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party.

5. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with the Action, this Settlement Agreement, and/or any other events underlying this Settlement Agreement.

6. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action.

7. This Settlement Agreement and the Stipulation For Settlement attached hereto as Exhibit A represent the entire agreement and understanding between the Parties regarding settlement of the Action and supersede any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

8. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that he has full authority to do so. The Plaintiffs warrant and represent that they have sole legal authority to release the claims made as the parents and successors in interest to Mateo Ortiz, and that are otherwise the subject of this Settlement Agreement, and that none of those claims have been transferred to any other individual or entity.

9. The Plaintiffs agree to hold the City harmless with regard to any liens or claims for medical treatment, attorneys' fees, and/or other expenses they may have incurred as a result of the Incident and/or the Action.

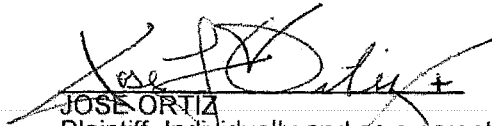
10. IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

Dated: April 24, 2013



ESMERALDA GALAN
Plaintiff, Individually and as a parent of
and successor in interest to Mateo Ortiz

Dated: April 25, 2013



JOSE ORTIZ
Plaintiff, Individually and as a parent of
and successor in interest to Mateo Ortiz


Dated: April __, 2013

CITY OF SAN JOSE

By: _____
NORA FRIMANN
Assistant City Attorney as Authorized
Agent for the CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: April 25, 2013

By:  _____
WILLIAM R. SELIGMANN
Counsel for the Plaintiffs

Dated: April __, 2013

By: _____
STEVEN B. DIPPELL
Sr. Deputy City Attorney

Exhibit A

Galan, Esmeralda, et al.)	CASE NO.
)	
Plaintiff(s),)	REF. NO.1110015720
)	
vs.)	STIPULATION FOR SETTLEMENT
)	C.C.P. § 664.6
City of San Jose, et al.)	
)	
Defendant(s))	
)	
	/	

This case having come before Hon. William F. Martin (Ret.) for mediation at the offices of JAMS, and the parties having conferred, it is hereby stipulated that this matter is deemed settled pursuant to the following terms and conditions:

1. CITY OF SAN JOSE shall pay to plaintiff(s) ESMERALDA GALAN and JOSE GATIZ and to his/her/their attorney(s) William Seligmann the total sum of \$ 325,000 in full settlement and compromise of this action and in release and discharge of any and all claims and causes of action made in this action, and in release and discharge of any and all claims and causes of action arising out of the events or incidents referred to in the pleadings in this action.

2. Plaintiff(s) agree to accept said sum in full settlement and compromise of the action and agree that such payment shall fully and forever discharge and release all claims and causes of action, whether now known or now unknown, which plaintiff(s) has against any and all of the defendants in that action arising out of the incident.

This settlement includes an express waiver of Civil Code § 1542, which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor."

3. Plaintiff(s) further agree to sign, acknowledge and deliver to defendants a standard form of a

[Handwritten signatures]

Release of all such claims and causes of action and to sign and deliver to defendants a standard form of Dismissal with Prejudice of the action.

4. Plaintiff(s) shall protect, defend and indemnify the defendants in said action, (and ~~his/her/their liability insurance carrier(s)~~) against any and all liens, subrogation claims and other rights that may be asserted by any person against the amount paid in settlement of the action or against any recovery by the plaintiff(s) in the action.

5. Counsel for each of the parties to this agreement represents that he/~~she~~ has fully explained to his/her client(s) the legal effect of this agreement and of the Release and Dismissal with Prejudice provided for herein and that the settlement and compromise stated herein is final and conclusive forthwith, and each attorney represents that his/her client(s) has freely consented to and authorized this agreement.

6. Payment of the stated settlement amount shall be made ~~by as soon as reasonably possible.~~ ^{SUBJECT TO CONDITIONS BELOW.}

7. Unless otherwise stated herein, each party will bear its own attorneys' fees and court costs.
a AND ALL LIENS.

8. Other terms and conditions:

(a) SUBJECT TO APPROVAL BY SJ CITY COUNCIL
IN BOTH CLOSED AND PUBLIC HEARINGS w/ REQUISITE
NOTICE TO PUBLIC ETC.

(b) UPON FINAL APPROVAL OF SETTLEMENT, MAYOR
REED WILL PROVIDE PLAINTIFFS WITH A LETTER
ACKNOWLEDGING THE LOSS OF MATEO AND THE LIFELONG
PAIN RELATED TO ~~THE~~ LOSS IN HIS OWN WORDS.

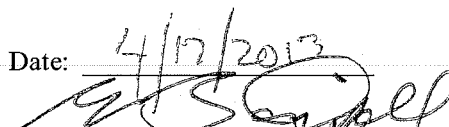
(c) CITY OF SJ AGREES TO NOT OPPOSE X-~~O~~ ROLANDO
GALAN'S MTN ~~FOR~~ RE: GOOD FAITH SETTLEMENT CONTINGENT
UPON CITY COUNCIL FINAL APPROVAL OF THIS SETTLEMENT.

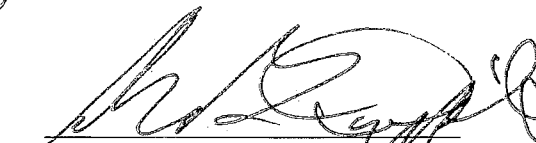
9. Any provisions of Evidence Code §§ 1115 - 1128 notwithstanding, this Stipulation is binding

[Signature] ccg j.o.


and may be enforced by a motion under Code of Civil Procedure § 664.6 or by any other procedure permitted by law in the applicable state or federal court.

10. This Stipulation is admissible and subject to disclosure for purposes of enforcing this settlement agreement pursuant to CCP § 664.6, or any other procedure permitted by law, and the provisions of the confidentiality agreement signed by the parties relative to this mediation are waived with respect to this Stipulation.


Date: 4/17/2013

Mr. Steven B. Dippell
Office of the City Attorney of San Jose




City of San Jose




Richard D. North Esq.
Office of the City Attorney of San Jose




City of San Jose




Nora V. Frimann Esq.
Office of the City Attorney of San Jose




City of San Jose




Richard Doyle Esq.
Office of the City Attorney of San Jose




City of San Jose



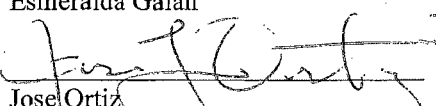
William R. Seligmann Esq.
L/O William R. Seligmann



Esmeralda Galan



Sidney Flores Esq.
Flores & Barrios



Jose Ortiz